

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Rao.

RAGHO CHANDRARAO KADAM,* APPLICANT, v. HANMATI
CHANDRARAO KADAM, OPPONENT.*

1913.

February 24.

*Civil Procedure Code (Act V of 1908), section 68, Order XXI, rule 100—
Decree—Execution proceedings transferred to Collector—Sale—Auction
purchaser placed in possession of property—Application by person wrongly
dispossessed to be made to Collector and not to Civil Court—Collector not
ministerial officer—Jurisdiction—Civil Court.*

Where execution proceedings are transferred to a Collector, and a person is wrongly ousted or dispossessed under the Collector's order, he should apply to the Collector, and not to the Court, complaining of such ouster or dispossession.

Order XXI, rule 100 of the Civil Procedure Code, 1908, has no application to a case where the execution of the decree has been transferred to the Collector, and he has acted under the powers conferred on him by the Local Government under section 70 of the Code.

THIS was an application under section 115 of the Civil Procedure Code (Act V of 1908), against an order passed by C. H. Vakil, Subordinate Judge at Roha.

Certain execution proceedings were transferred by a Civil Court to the Collector under the provisions of section 68 of the Civil Procedure Code, 1908.

The Collector sold the property by auction and delivered possession to the purchaser.

The applicant who was dispossessed of the property and who claimed it as his own, applied to the Civil Court under Order XXI, rule 100, for restoration of possession.

The Subordinate Judge dismissed the application on the ground that he had no jurisdiction to entertain it; for the execution proceedings having been transferred to the Collector he alone was competent to deal with it.

The applicant applied to the High Court.

* Civil Extraordinary Application No. 230 of 1912.

C. A. Rele, for the applicant.—The lower Court has jurisdiction to entertain the application under Order XXI, rule 100. The case of *Mancherji v. Thakurdas*⁽¹⁾ is distinguishable. Where a third party is dispossessed in execution of a decree his only remedy is to apply to the Court under Order XXI, rule 100. The rules framed by the Local Government under section 70 of the Civil Procedure Code do not confer any special powers in this behalf on the Collector. The Collector has no power to set aside a sale, which can only be done by the Court : see *Narayan v. Rasulkhan*⁽²⁾.

W. B. Pradhan, for the opponent.—The applicant ought to have applied to the Collector, under rule 14 of the rules framed under section 70 of the Civil Procedure Code. The applicant has a separate remedy by way of suit: the High Court should not, therefore, interfere under its extraordinary jurisdiction.

Rele, in reply.

RAO, J. :—The opponent purchased certain land at a sale held by the Collector in execution of a decree which had been transferred to him under section 320 of the Civil Procedure Code of 1882. On 8th November 1911 the Collector put the opponent in possession of the property sold. Thereupon the applicant applied to the Court alleging that he had long been in possession of the property on his own account and not on behalf of the judgment-debtor and complaining that he had been wrongly dispossessed by the auction-purchaser.

This application was rejected by the Subordinate Judge on the ground that he had no jurisdiction to interfere with the Collector's order.

It is urged by Mr. Rele on behalf of the applicant that under Order XXI, rule 100 of the Civil Procedure Code the Court is bound to make an inquiry, if a person

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(1) (1905) 7 Bom. L. R. 682.

(2) (1899) 23 Bom. 531.

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other than the judgment-debtor complains of his dis-
possession by the auction-purchaser. This rule has no
application to a case, where the execution of the decree
has been transferred to the Collector and he has acted
under the powers conferred on him by the Local Gov-
ernment under section 70 of the Civil Procedure Code
or the corresponding section of the Code of 1882. In
the present case the Collector put the auction-purchaser
in possession of the property sold under rule 14 of the
rules made by the Local Government under section 320
of the Civil Procedure Code of 1882. Under this rule
the Collector has the power to order delivery of posses-
sion to the purchaser, "if need be by *removing* any
person who refuses to vacate the same". If a person is
wrongly ousted, or dispossessed under the Collector's
order, he may apply to the Collector and not to the
Court, complaining of such ouster or dispossession ; so
long as the execution of the decree is in the hands of
the Collector, he alone can execute it in accordance with
the rules made by the Local Government. He is not a
mere ministerial officer charged with the duty of
selling property under the directions of the Court, but
the whole execution of the decree is transferred to him,
and the Court cannot interfere or exercise any of the
powers conferred on him : see *Keshabdeo v. Radhe
Prasad*⁽¹⁾ ; *Muhammad Said Khan v. Payag Sahu*⁽²⁾ ;
and section 70, clause (2) of the Civil Procedure Code.

The Subordinate Judge was therefore right in holding
that he had no jurisdiction to entertain the application
under Order XXI, rule 100 of the Civil Procedure Code.
Rule discharged with costs. The application may be
returned to the applicant for presentation to the
Collector.

Rule discharged.

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⁽¹⁾ (1888) 11 All. 94.

⁽²⁾ (1894) 16 All. 228.